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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,227	11/14/2003	Frank Messano		8476

7590

06/01/2004

Frank Messano  
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Simi Valley, CA 93065

EXAMINER

BASINGER, SHERMAN D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/712,227

Applicant(s)

MESSANO, FRANK

Examiner

Sherman D. Basinger

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7-10 and 12-18 is/are allowed.
- 6) ☒ Claim(s) 6, 11 and 19-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/14/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. The terminal disclaimer filed November 14, 2003 is not approved as applicant failed to include the fee of \$55.00.

#### *Priority*

2. The instant application does not appear to be a division of serial number 10/177314 filed June 24, 2002.
3. The following is taken from the MPEP:

#### **201.06 [R-1] \* > Divisional < Application**

A later application for an independent or distinct invention, carved out of a pending application and disclosing and claiming only subject matter disclosed in the earlier or parent application, is known as a divisional application or "division." >The divisional

The instant application adds subject matter not disclosed in serial number 10/177314 such as the tow hitch anchor pulpit, the marine steering station and the tunnel tapering element.

4. The instant application repeats a substantial portion of prior Application No. 10/177314, filed June 24, 2002, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

### ***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the disc brake, the link means for locking the direction of the wheel steering to one position and the adjustable wheel to vehicle ride height means all of claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

#### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

#### **Timing of Corrections**

Art Unit: 3617

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

6. If applicant intends to claim the benefits of application numbers 10/177,314 and 09/766,996 under 35 U.S.C. 120, lines 3-6 of page 1 of the specification and under the subtitle CROSS-REFERENCE TO RELATED APPLICATIONS should be amended as follows:

This is a continuation-in-part of application number 10/177,314, filed June 24, 2002, now patent 6,679,543 which is a continuation-in-part of application number 09/766,996, filed January 23, 2001, now patent 6,425,625.

As pointed out above, the instant application because it adds matter not disclosed in application number 10/177,314, appears not to be a division of said application.

7. Lines 7-9 of page 1 of the specification and under the subtitle CROSS-REFERENCE TO RELATED APPLICATIONS should be deleted because application number 10/177,314 did not become a division of itself when applicant amended the title on August 26, 2003.

8. That application number 10/142,403 is now abandoned should be inserted in line 11, page 1 of the specification and line 14, page 3 of the specification.

9. Lines 12-16 of page 9 of the specification should be amended to correctly reflect that application number 10/177,314 did not become a division of itself when it was amended on August 26, 2003. It is suggested that applicant amend lines 12-16 of page 9 of the specification as follows:

Lastly, this present invention relates to application 10/177,314, filed June 24, 2002, now patent 6,679,543, which was amended August 26, 2003, which is a continuation in part of application number 10/766,966, filed January 23, 2001, now patent 6,425,625 and which claims:

10. Page 38 of the specification should be amended to reflect that the instant application is a continuation in part of application number 10/177,314 filed June 24, 2002 and now patent 6,679,543 as opposed to being a division of said application. Page 38 should also be amended to delete lines 7-10 as application number 10/177,314 did not become a division of itself when amended on August 26, 2003.

#### ***Claim Objections***

11. Claim 15 is objected to because of the following informalities: the semi-colon at the end of claim 15 should be a period. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 6, 11, 19 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Regarding claim 6, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

15. Regarding claim 11, the phrases "or the like" and "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like" and "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

16. Regarding claim 11, the subject matter within the parentheses, (batteries, capacitors, and the like) and (generators, alternators, fuel cells, solar cells, and the like), renders the claim indefinite because it is unclear whether the limitations within the parentheses are part of the claimed invention. See MPEP § 2173.05(d).

17. Regarding claim 19, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

18. Regarding claim 20, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by

Art Unit: 3617

"and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

19. Regarding claim 20, the subject matter within the parentheses, (car, truck, travel trailer, motorhome, bus, and the like), renders the claim indefinite because it is unclear whether the limitations within the parentheses are part of the claimed invention. See MPEP § 2173.05(d).

20. Regarding claim 23, the subject matter within the parentheses, (batteries, capacitors, and the like) and (generators, alternators, fuel cells, solar cells, and the like), renders the claim indefinite because it is unclear whether the limitations within the parentheses are part of the claimed invention. See MPEP § 2173.05(d).

#### ***Allowable Subject Matter***

21. Claims 1-5, 7-10 and 12-18 are allowed.

22. Claims 6, 11, 19, 20-23 are would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

#### ***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cook is cited to show the auto marine vehicle with a central hull 7, outer hulls 39 with land travel wheels within the hulls, a hinge mechanism 60 coupling the outer hulls to the central hull, a power actuator 48 for pivoting the hulls between land travel and water travel, and a provision for marine propulsion 33, 34. Cook does not disclose a roof top



fold down flying bridge deck, a rooftop steering station, ground effects lifting tunnels between the hulls, and a movable tapering device to reduce the cross-sectional area in the rearward portion of the ground effects lifting tunnel to increase dynamic lift.

Kelly is cited to show the combination trailer and pontoon boat with a central hull 23, outer hulls 12 with land travel wheels within the hulls, a hinge mechanism 13 coupling the outer hulls to the central hull, a power actuator 54, 55 for pivoting the hulls between land travel and water travel, and a provision for marine propulsion 58. Kelly does not disclose a roof top fold down flying bridge deck, a rooftop steering station, ground effects lifting tunnels between the hulls, and a movable tapering device to reduce the cross-sectional area in the rearward portion of the ground effects lifting tunnel to increase dynamic lift.

Millerbernd is cited to show the amphibious bus with a central hull 20, outer hulls 23 with land travel wheels within the hulls, a hinge mechanism 26 coupling the outer hulls to the central hull, a power actuator 63 for pivoting the hulls between land travel and water travel, and a provision for marine propulsion 86, 89. Kelly does not disclose a roof top fold down flying bridge deck, a rooftop steering station, ground effects lifting tunnels between the hulls, and a movable tapering device to reduce the cross-sectional area in the rearward portion of the ground effects lifting tunnel to increase dynamic lift.

Messano 988 is one of applicant's prior patents disclosing a streamline rooftop deck for motorhomes with adjustable rooftop cowlings, folding safety handrails, hatchways, stairways and furnishings affixed to the top of motorhomes. Messano 988 does not

disclose an amphibious vehicle at all including a central hull , outer hulls with land travel wheels within the hulls, a hinge mechanism coupling the outer hulls to the central hull, a power actuator for pivoting the hulls between land travel and water travel, a provision for marine propulsion, a rooftop steering station, ground effects lifting tunnels between the hulls, and a movable tapering device to reduce the cross-sectional area in the rearward portion of the ground effects lifting tunnel to increase dynamic lift.

Messano 625 discloses in figures 14-17 an amphibious vehicle which in these figures is shown to have a central hull, a rooftop fold-down flying bridge consisting of bulwarks, a plurality of fold-down safety rails 8, and a plurality of fold down seats 5, a cabin beneath the rooftop, an outer hull on each side of the central hull with land travel wheels therein, a hinge mechanism coupling the outer hulls to the central hull, and a powered actuator to pivot the outer hulls. Messano 625 does not disclose a rooftop steering station, does not provide a written disclosure of the tunnels between the hulls as being ground effects lifting tunnels, does not disclose a provision for marine propulsion and does not disclose a movable tapering device to reduce the cross-sectional area in the rearward portion of the ground effects lifting tunnel to increase dynamic lift.

Messano 625 is a prior patent of applicant's having an issue date of January 20, 2004.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

Art Unit: 3617

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sherman D. Basinger  
Primary Examiner  
Art Unit 3617

5/20/04

Sdb  
5/20/04